

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7469

Petitions of Vermont Telephone Company, Inc.)
("VTel"), and Comcast Phone of Vermont, LLC,)
d/b/a Comcast Digital Phone ("Comcast"), for)
Arbitration of an Interconnection Agreement)
Between VTel and Comcast, Pursuant to Section)
252 of the Telecommunications Act of 1996, and)
Applicable State Laws

Order entered: 7/3/2009

SCOPE AND SCHEDULING ORDER AND NOTICE OF HEARING

On March 25, 2009, the Public Service Board ("Board") assigned me as Hearing Officer to determine whether Comcast Phone of Vermont, LLC, d/b/a Comcast Digital Phone ("Comcast Phone"), has satisfied Condition 2 of the Order issued by the Board on February 2, 2009. A status conference was held on April 16, 2009, and the scope of this proceeding was identified as central concern of the parties. Vermont Telephone Company, Inc. ("VTel") filed a Motion for Clarification on the Board's intentions as it related to Condition 2 on April 22, 2009. The Board issued an Order in Response to Motion for Clarification on May 15, 2009, and took the opportunity to clarify the scope of my review in this proceeding. Subsequent to the Board's Order, the parties filed comments and replies on May 22 and later dates in May and June.

The Board Clarification Order reiterated that Comcast Phone is a telecommunications carrier for purposes of the Act, "with all the rights and responsibilities that entails, including interconnection rights. . . ." The Board stated that it did not intend this finding to be conditioned on a subsequent determination as to Comcast Phone's compliance with Condition 2. The Board went on to further clarify the scope of this inquiry to include "whether Comcast Phone has met its obligations under Condition 2 and whether its satisfaction of those obligations provides adequate confidence as to the availability of its services to non-affiliated third parties and the absence of undue discrimination." Further, the scope would include an assessment of "whether Comcast Phone is offering services on a non-discriminatory basis that a potential non-affiliated customer could reasonably purchase." Finally, the scope should address the question of whether the terms

and conditions of service are set so narrowly that the defined niche of potential customers would only include Comcast's affiliate. The Board has asked that to the extent that Comcast Phone fails to meet the requirements of Condition 2 or its continuing obligations as a common carrier, I should identify appropriate actions that might be needed to correct any deficiencies. Further, if corrective action is inadequate or is unlikely to succeed, the Board could ultimately conclude that Comcast Phone no longer meets the requirements of a telecommunications carrier under the Act.

The Department of Public Service ("Department") filed its comments on the scope on May 22, 2009. In its comments, the Department identified four questions to be answered. The Department's list roughly parallels the scope as presented by the Board in its May 15, 2009, Order. The Department concludes that Comcast has not met its obligations under Condition 2 because all the terms and conditions have neither been disclosed nor been made publicly available. The Department goes on to suggest potential remedies to be taken by Comcast Phone to alleviate these concerns.

For its part, VTel, in its May 22 Comments, highlights six statements made by the Board in its March 25, 2009, and May 15, 2009 Orders. VTel indicates that the first two statements of the Board can be framed as an issue of whether Comcast Phone has filed all prices, terms and conditions of service provided to its affiliate, Comcast IP Phone II, LLC ("Comcast IP") (i.e., whether documentation is complete) and that issues 3-5 address whether Comcast Phone's affiliate arrangements are discriminatory. I agree that the questions raised by the Board can be reframed to these two fundamental concerns.

I find the issues raised by VTel and by the Department present a compelling basis for concern that Comcast Phone has not demonstrated that it has met Condition 2, nor satisfactorily addressed whether Comcast Phone's affiliate arrangements are discriminatory. These concerns have not been fully addressed by the subsequent filings and affidavits that have been filed by Comcast.

Based on the comments and the replies received to date, I conclude that discovery and hearings will be needed with prefiled testimony and rebuttal testimony. I am asking that the parties (particularly VTel and the Department) identify and group the specific issues that require a determination by the Board as part of the resolution of the two fundamental questions. As an

initial step in the process, I anticipate Comcast providing testimony and sharing all relevant and up-to-date information that will allow the Board to conclude that Comcast has met its obligations pursuant to Condition 2 and for delivering non-discriminatory service consistent with its status as a telecommunications carrier. (While this information has already been provided through various Comcast filings and proposed submissions, this submission should provide a single consolidated source of up-to-date information that anticipates all the areas of concern that have been raised to date.) The parties will also be provided an opportunity to brief the issues and submit reply briefs. I invite the parties to propose an agreed-upon schedule for the remainder of this proceeding. I am scheduling a further status conference to consider the schedule and next steps. However, the status conference will be canceled if a schedule can be agreed upon in advance and the parties agree that there is no need for further discussion.

Parties should identify the list of issues to be resolved and submit the list to the Board by July 10, 2009. Parties should propose an agreed-upon schedule to resolve all outstanding issues and notify the Board of the proposal by July 15, 2009. Parties should submit the agreed-to schedule on July 16, 2009. If necessary, parties should be prepared to attend a status conference on July 16, 2009, at 9:30 A.M. in the Board's Hearing Room (located on the 3rd Floor of the Chittenden Bank Building at 112 State Street in Montpelier) to resolve any remaining issues concerning the schedule.

SO ORDERED.

Dated at Montpelier, Vermont, this 3rd day of June, 2009.

s/ J. Riley Allen

J. Riley Allen, Hearing Officer

OFFICE OF THE CLERK

FILED: July 3, 2009

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)